

1 **UNITED STATES DISTRICT COURT**2 **EASTERN DISTRICT OF NORTH CAROLINA**

3 **UNITED STATES OF AMERICA,**)

4)

5 **Plaintiff,**) **DOCKET NO. 5:14-cr-0175-FL-1**

6)

7 **VS.**)

8)

9 **MARCUS WHITE,**)

10)

11 **Defendant.**)

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**TRANSCRIPT OF DETENTION HEARING
BEFORE MAGISTRATE JUDGE JAMES E. GATES
THURSDAY, FEBRUARY 5, 2015, 10:23 A.M.
RALEIGH, NORTH CAROLINA**

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FOR THE PLAINTIFF:

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Government's
Witnesses:

4 Sean Collins Direct Cross Redirect

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Defendant's
Witnesses:

7 Regina White 17 23 26

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10 ARGUMENT: Ms. Dominguez 27

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12 THE COURT: Finding 30

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P R O C E E D I N G S

2 THE COURT: This is the case of United States versus
3 Marcus White. This matter is set for a detention hearing.

4 This is not a presumption case, meaning that the
5 burden of production at the outset rests with the Government.

6 So, Mr. Renfer, I'll be happy to entertain any
7 evidence the Government wishes to present, sir.

8 MR. RENFER: Yes, Your Honor.

9 At this time the Government would call Sean Collins to
10 the stand.

11 SEAN COLLINS, GOVERNMENT'S WITNESS, SWORN

12 THE COURTROOM DEPUTY: Thank you. Have a seat and
13 state your name for the record, please.

14 THE WITNESS: Sean Collins.

15 DIRECT EXAMINATION

16 BY MR. RENFER:

17 Q Sir, where are you currently employed?

18 A I currently work for the Fayetteville Police Department.

19 I've been there since 1997. I'm assigned to, currently
20 assigned to the Bureau of Alcohol, Tobacco, and Firearms Task
21 Force.

22 Q And what are some of your duties and responsibilities?

23 A I investigate crimes related to guns and drugs and gang
24 violence in Fayetteville that can potentially be prosecuted
25 federally.

1 Q And as part of your duties and responsibilities are you
2 familiar with an investigation of the defendant, Marcus White?

3 A I am.

4 Q And does the date of that investigation include December 4,
5 2013?

6 A Yes.

7 Q Could you tell the Court what, if anything, happened with
8 regard to the defendant on December 4, 2013?

9 A On that date, members of the Fayetteville Police Gun and
10 Gang Violence Unit were in the area of Bonnie Doone in
11 Fayetteville attempting to locate a subject who had a murder
12 warrant on him. A plan was set into place to, to look for the
13 subject in some abandoned houses along Mike Street in Bonnie
14 Doone.

15 As the units pulled into the, the area to start looking for
16 the subject -- they were driving unmarked Dodge Chargers, which
17 are police vehicles, but they weren't painted with Police on
18 them -- when they pulled into the area a light in color Toyota
19 Scion left the area at a high rate of speed. One of the
20 officers, Officer Dave Franklin, believed that the subject they
21 were looking for for the murder warrant might be in the vehicle
22 and attempted to conduct an investigative stop on the vehicle.
23 He described, while he was attempting to stop the vehicle, it'd
24 slow down almost to a stop and then accelerate rapidly, again,
25 slow down and accelerate. He said this vehicle did this a

1 couple of times.

2 Once the vehicle finally stopped, it was about a quarter
3 mile from the area where it had originally been seen. Officer
4 Franklin noticed when he approached the vehicle that the
5 driver, Mr. White, had a bag of .22 caliber shell casings in
6 the driver's side door.

7 Q Now were they shell casings, or was it actual ammunition?

8 A Actual ammunition.

9 He stated that the, the ammunition was clearly visible
10 through the bag, so he started to get the occupants out of the
11 vehicle and, and detain them. Mr. White was found to be the
12 driver of that vehicle. There were two other occupants in the
13 rear seat, an Xavier Johnson and a female named Jessica
14 Nicholson. Both those occupants were found to have drugs in
15 their possession.

16 While Officer Franklin was conducting this vehicle stop,
17 the officers in the area, the traffic stop was close enough to
18 where they, where they were searching for the subject they
19 could walk to the traffic stop. So as they were walking to the
20 traffic stop to assist Officer Franklin, Officer Armstead
21 located two firearms along the roadway. He noted that the
22 firearms were, were dry, even though it had been raining, and
23 the foliage around them and the grass around the firearms was
24 wet.

25 So it appeared that the firearms had been recently

1 discarded. He described --

2 Q And to the best of your knowledge, was the location of
3 those firearms consistent with the location of where the car
4 had slowed down?

5 A Yes. It had -- it was in the direct path of where the
6 vehicle was.

7 The, the firearms were found to be a Ruger .22 caliber
8 semi-automatic pistol and a North American Arms revolver .22
9 caliber pistol.

10 Q And what happened after that?

11 A After that, all three of the subjects were brought back to
12 the police department to be interviewed. Mr. White, who was
13 the driver, was transported by Officer Franklin and Special
14 Agent Johnson of the ATF. On the way to the police department
15 Mr. White was given his Miranda warnings and was told by
16 Officer Franklin that -- that he's -- Officer Franklin told him
17 that he saw him throw the gun out of the vehicle.

18 The other two occupants were, were transported by other
19 officers and once they got down to the police department they
20 were all put into separate interview rooms and interviewed, or
21 attempted to be interviewed by the detectives.

22 Mr. White was interviewed first. He was again -- they,
23 they asked him -- they let him know, "Hey, you were read your
24 Miranda warnings. Do you still understand your rights?" He
25 agreed to all that. The interview was recorded. During the

1 interview Mr. White stated that, that he did possess the Ruger
2 .22 caliber semi-automatic pistol and he told the officers,
3 Officer Franklin and Special Agent Johnson, that he received
4 the pistol from a subject named Cornelius Jackson, who was --
5 and he received it shortly before Mr. Jackson was murdered on
6 October 31st of 2013. White knew a little bit about the gun.
7 He said that Jackson received the gun as a payment for a drug
8 debt from someone else. White told the officers that he kept
9 the firearm when he was at home outside in the woods because he
10 knew he wasn't supposed to have it and while he was riding
11 around, he normally carried the gun and he carried it in his
12 waistband when he was driving.

13 More importantly, on that day Mr. White had the gun because
14 he knew he was going into the area where there had been some
15 recent murders and, and he wanted to have protection.

16 Q And did he make any statements regarding how he obtained
17 the ammunition?

18 A Yes. He stated that when Jackson gave him the firearm he
19 also gave him the ammunition.

20 Q And that was the bag of ammunition found in the driver's --

21 A That Officer Franklin saw in the door panel of the vehicle.

22 Q And the female passenger, what, if anything, did she say,
23 if you recall?

24 A She did say that she -- she was immediately cooperative
25 after she was given her Miranda warning. She stated that the

1 drugs she had in her possession were given to her by
2 Mr. Johnson, the other passenger, and he told her to hide the
3 drugs so, you know, the police wouldn't, most likely, wouldn't
4 search her.

5 She also stated that while driving Mr. White slowed the
6 vehicle down and accelerated and at one of the times where he
7 slowed down she saw him throw something out of the window. She
8 didn't know exactly what it was, but she saw him throw
9 something out of the window.

10 And she also stated that -- I think that was it.

11 Q Now the firearms and ammunition, were they analyzed by ATF?

12 A Yes, they were. Agent Johnson is a nexus expert. He
13 examined both the firearms and ammunition and determined that
14 they're, they were manufactured outside of North Carolina.

15 So if they were possessed within it, traveled in commerce.

16 Q And was a fingerprint exam conducted to establish further
17 the defendant had a prior felony conviction at the time he
18 possessed the firearm on December 4, 2013?

19 A Yes, it was. And --

20 Q Specifically, he had a prior conviction for assault with a
21 deadly weapon inflicting serious injury, correct?

22 A Yes, and firearm by felon.

23 Q And also, a firearm by felon conviction, correct?

24 A Yes.

25 MR. RENFER: Those are all the questions I have, Your

1 Honor.

2 THE COURT: Thank you, sir.

3 Ms. Dominguez.

4 CROSS-EXAMINATION

5 BY MS. DOMINGUEZ:

6 Q Agent Collins, you testified that the, that the police were
7 looking for a murder suspect in that region of Bonnie Doone?

8 A Yes, ma'am.

9 Q And that they believed that that suspect was in the car?

10 A He could possibly be in the car.

11 Q But he -- but there wasn't -- but they didn't find who they
12 were looking for, correct?

13 A Correct.

14 Q And whose car was this Toyota Scion? Who was it registered
15 to?

16 A I'm not sure. It might have been a rental vehicle.

17 Q But you don't know if it was a rental --

18 A I don't --

19 Q -- vehicle or somebody's personal vehicle?

20 A No, ma'am, I don't know for sure.

21 Q Do you know if the Fayetteville Police Department are
22 aware, were aware of that fact of whose the, who the vehicle
23 belongs to?

24 A I'm sure they found out once they ran the registration
25 plate.

1 Q So you said that Mr. White was the driver, correct?

2 A Yes, ma'am.

3 Q And you said that he was in possession of a bag of bullets
4 that you said were his, correct?

5 A Yes.

6 Q But they were actually in the door?

7 A Yes, ma'am.

8 Q You also testified that those same bullets -- that -- he
9 gave a statement, correct?

10 A Correct.

11 Q And that he gave a statement about a Ruger and he gave a
12 statement about the bullets?

13 A Yes.

14 Q And you testified that the statement was recorded?

15 A Yes, ma'am.

16 Q Have you listened to that recording?

17 A No.

18 Q So you don't know if it actually picked up the recordings?
19 Sometimes recordings don't actually, aren't monitored?

20 A It was a video recording.

21 Q It's a video recording?

22 A Yes.

23 Q Are you aware of whether it's an audible video recording?

24 A Yes. You could watch it and you could see it and you can
25 hear it. I've seen the video. I just haven't watched the

1 video.

2 Q Okay. You've seen the video, but you haven't --

3 A I've seen it function properly, but I haven't -- I'm not
4 the case agent in this.

5 So I didn't sit down and watch --

6 Q You did see the video?

7 A -- second for second.

8 Q You didn't sit down and watch this specific video, but you
9 have --

10 A In its entirety, yes.

11 Q Okay.

12 A I know there's a video that, that functions like it should.
13 It has Mr. White talking to Agent Johnson and Officer Franklin.

14 Q Okay. Were the -- is it customary for the people that are
15 being interviewed to be informed that they're being videotaped?

16 A No.

17 Q So the three subjects were interviewed and all of those
18 were videotaped, audio-videotaped?

19 A Yes.

20 Q Now you testified that these two firearms were -- well, you
21 testified that the car was eventually at a stop a quarter of a
22 mile past where it was originally seen?

23 A Probably less than that.

24 Q Okay. So it was --

25 A Short distance.

1 Q It was a short distance?

2 A Uh-huh (indicating an affirmative response).

3 Q So you testified that it kept stopping and slowing down,
4 but it was over a short distance?

5 A Yes, ma'am.

6 Q Not, not a quarter of a mile?

7 A It was a distance within a quarter of a mile, in my
8 opinion, of the area.

9 Q And so you testified that the officers that had been, I
10 guess, at the original location walked to the secondary
11 location and in that walk they discovered two firearms?

12 A Yes. At least one officer, Officer Armstead, walked from
13 where he was to the traffic stop and located the firearms.

14 Q And so that would have been a walk of less than a quarter
15 of a mile?

16 A Yes, in my opinion.

17 Q And this is in a neighborhood in Fayetteville that has gang
18 activity, is what you testified --

19 A Yes, ma'am.

20 Q -- to?

21 And these weapons were found in the grass?

22 A On the side of the road in grass and bushes, foliage area.

23 Q Okay. So would they have been visible to the naked eye, or
24 were they kind of --

25 A Yeah. They were easily seen. I -- one was laying in the

1 grass and one was laying on the roadside near some bushes.

2 So on how you word it, it could be in the grass, on the
3 roadside, but they were clearly visible by Officer Armstead.

4 He easily recognized them. 'Cause he didn't know he was
5 looking for guns.

6 Q So when those guns were retrieved were they swiped for
7 fingerprints?

8 A They were collected by a forensic technician and they were
9 processed for DNA and latent prints.

10 Q So both DNA and prints?

11 A Yes.

12 Q But those results aren't available at this time?

13 A If there were any fingerprints on the firearms that could
14 have been compared, they would have been in the file.

15 So there -- no fingerprints were found that could be
16 compared.

17 Q So the fingerprint portion of this always happens rather
18 fast, but it's the DNA that takes time in the lab?

19 A Yes. Well -- I didn't want to get into DNA with the lab,
20 but we don't send DNA to the lab as DNA because they don't
21 compare it like they do fingerprints. You'd have to send a
22 known sample of DNA with an unknown sample of DNA for the lab
23 to make a comparison.

24 So you can't just send the DNA to the lab.

25 Q So we're -- so you wouldn't call this a case, then, where

1 we're awaiting DNA analysis?

2 A No, I would not.

3 Q And so you testified that Mr. White had this interview and
4 he explained that he received the gun from his, from a deceased
5 person, Cornelius Jackson?

6 A Yes.

7 Q And that he had received it a, almost a year and a half
8 prior, or a year and three months prior?

9 A No. October 31, 2013 and this happened on December 4,
10 2013.

11 Q Oh, this is 2013, not 2000 -- oh, okay.

12 A Yes, ma'am.

13 Q Sorry. So just three months prior.

14 A And --

15 Q Almost -- just a little over a month.

16 Q Okay. Well, the -- and so was Mr. White charged with this
17 from the Fayetteville Police Department?

18 A Charged with?

19 Q This firearm?

20 A Yes.

21 Q And just was he bonded out of custody or --

22 A I'm assuming he was 'cause he was -- he was released -- he
23 was out and about when the federal warrants came out.

24 A So he had to be located.

25 Q So do you know if he was released that same day,

1 December --

2 A Oh, I don't know, ma'am.

3 Q -- 4, 2013? Okay.

4 And just so I make sure I understand your testimony, no
5 drugs were found on Mr. White, correct?

6 A Correct.

7 Q And no statements were made that connected Mr. White to any
8 drugs that were found in that vehicle, correct?

9 A Correct.

10 MS. DOMINGUEZ: No further questions, Your Honor.

11 THE COURT: Thank you.

12 Mr. Renfer?

13 MR. RENFER: No redirect, Your Honor.

14 THE COURT: Very well.

15 You may step down. Thank you, sir.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Is that the evidence for the Government,

18 Mr. Renfer?

19 MR. RENFER: Yes, Your Honor, plus an argument. We'll
20 be arguing matters that are in the Pretrial report.

21 THE COURT: That'll be fine.

22 I'll note for the record I have reviewed the Pretrial
23 Services report.

24 Ms. Dominguez.

25 MS. DOMINGUEZ: Yes, Your Honor.

1 The defense calls Regina White to the stand.

2 THE COURTROOM DEPUTY: Come right up here, please,
3 ma'am. Raise your right hand, left hand on the Bible.

4 REGINA WHITE, DEFENSE WITNESS, SWORN

5 THE COURTROOM DEPUTY: Have a seat right over there,
6 please. And please state your name for the record.

7 THE WITNESS: Regina White.

8 DIRECT EXAMINATION

9 | BY MS. DOMINGUEZ:

10 | Q Ms. White, how do you know Marcus White?

11 A He's my son.

12 Q So you're his mother?

13 A Yes, ma'am.

14 Q Where do you live?

15 A Fayetteville, North Carolina.

16 Q Do you live in a home?

17 A Yes, ma'am.

18 Q Who else lives with you at that home?

19 A My 86-year-old grandmother.

20 Q So your grandmother and Mr. White's great-grandmother --

21 A Yes.

22 Q -- lives there?

23 A Yes.

24 Q Are you employed?

25 A Yes, ma'am.

1 Q What's your job?

2 A I work at Days Inn as a housekeeper.

3 Q And are your hours -- what are your hours?

4 A They vary, but I'm pretty much fulltime. But I work
5 probably about 20 hours a week.

6 Q You work 20 hours a week?

7 A Twenty to twenty-five, yes.

8 Q So not, not fulltime, part time?

9 A Well, yeah. Well, yeah.

10 Q And would you say that a majority of those hours are worked
11 on the weekends or during the week?

12 A Both. Varies, like I said. Sometime they call me -- I'm
13 mainly a weekend person, but I do get week-day hours.

14 Q And when you're not working are you generally able to be
15 home?

16 A Yes.

17 Q Does your 87-year-old grandmother require care?

18 A Yes.

19 Q Do you assist in that care?

20 A Some, and she has home health that comes on three days a
21 week.

22 Q And so how -- what are the hours of the home healthcare
23 worker in the home?

24 A They come about 11:00. They, they stay about an hour and a
25 half.

1 Q Okay. And my understanding would be, then, that your
2 grandmother is very often at the home?

3 A Pretty much, yes, ma'am.

4 Q Is her health okay?

5 A Yes, ma'am, pretty much.

6 Q Other than being elderly, is her health okay?

7 A Yeah. Diabetes, you know, high blood pressure. But she's
8 okay.

9 Q She able to walk?

10 A Yeah.

11 Q And is her mental facilities --

12 A Yes.

13 Q -- okay?

14 A Uh-huh (indicating an affirmative response).

15 Q Prior to Mr. White being in custody here, he wasn't living
16 with you at that time, correct?

17 A No.

18 Q But we have discussed that you would be willing to have him
19 live with you in your home --

20 A Yes.

21 Q -- correct?

22 A Yes.

23 Q And you've talked about that with your grandmother and --

24 A Yes.

25 Q -- and she agrees that if he --

1 A Yes, ma'am.

2 Q -- is able to live in the home?

3 A Yes, ma'am.

4 Q We've also talked with you about what it means to be a
5 third-party custodian, is that true?

6 A Yes.

7 Q And we told you that as a third-party custodian if this
8 Court were to allow Mr. White to go live with you you would be
9 responsible to report to the Court and to his probation officer
10 if he were to violate --

11 A Right.

12 Q -- the conditions of his release?

13 A Yes.

14 Q We talked to you --

15 A Yes.

16 Q -- about that?

17 A Yes, ma'am. Yes, ma'am.

18 Q And you agreed that you would be willing to do that?

19 A Yes, ma'am.

20 Q And we also talked to you about the importance of him being
21 in court when he's required to be in court, correct?

22 A Yes, ma'am.

23 Q And you also would have the ability to make sure he makes
24 his court appearances?

25 A Yes, ma'am.

1 Q Do you have a vehicle?

2 A Yes.

3 Q And you have a driver's license, correct?

4 A Yes, ma'am.

5 Q Now your home has three bedrooms, so is one of those rooms
6 available for him?

7 A Yes.

8 Q You don't have any firearms in your home --

9 A No.

10 Q -- correct?

11 A No, ma'am.

12 Q You do not allow illegal drugs --

13 A No.

14 Q -- in your home, correct?

15 A No, ma'am.

16 Q Do you have a, what, what we call a landline telephone --

17 A Yes.

18 Q -- in your home?

19 And if this Court were to release your son with electronic
20 monitoring, would you be willing to have special features
21 removed from your landline telephone, like Call Waiting, so
22 that that system could be set up?

23 A Uh-huh, yes, ma'am.

24 Q Do you also have a cell phone?

25 A Yes, ma'am.

1 Q Do you get cellular service where you live?

2 A Yes, ma'am.

3 Q Are you aware of your son's prior criminal convictions?

4 A Yes, ma'am.

5 Q You're aware that, then, that he's been convicted of the,
6 in the past for serious charges?

7 A Yes, ma'am.

8 Q His last, his last serious charge or his last charge was a
9 misdemeanor charge of possession of drug paraphernalia, do you
10 remember that, in 2012?

11 A Yes.

12 Q He got released --

13 A Yes.

14 Q -- from 45 days of custody in March --

15 A Uh-huh (indicating an affirmative response).

16 Q -- of 2013?

17 A Yes, ma'am.

18 Q Are you aware that he's had trouble when he's been on
19 probation in the past with meeting his obligations?

20 A Yes, ma'am.

21 Q Would you do everything in your power to ensure that he
22 meets his obligations if this Court were to release him?

23 A Yes, ma'am.

24 Q Do you feel like your son respects you?

25 A Yes, ma'am.

1 Q Do you feel like he listens to you?

2 A Yes, ma'am.

3 MS. DOMINGUEZ: No further questions, Your Honor.

4 THE COURT: Thank you, ma'am.

5 Mr. Renfer?

6 MR. RENFER: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. RENFER:

9 Q Ma'am, what's the address where you currently live?

10 A 210 Early Street.

11 Q So -- and how long have you lived at that address?

12 A About 2-1/2 years. Two, three years.

13 Q And, ma'am, when, when the defendant was about 17 or 18
14 years old, you know, about eight years ago, was he living with
15 you, primarily?

16 A Yes.

17 Q And when he was, you know, up through, maybe, 21 years old,
18 was he still living with you then, primarily?

19 A Yes.

20 Q So when he was, committed the offense and was convicted of,
21 you know, felony breaking and entering and felony larceny in
22 2007 he was living with you when he committed that offense --

23 A Yes.

24 Q -- and was convicted, right?

25 A Uh-huh (indicating an affirmative response).

1 Q And then in 2009 when he committed the offense of assault
2 with a deadly weapon inflicting serious injury and was
3 convicted of that he was living with you primarily then as
4 well, correct?

5 A Yes.

6 Q And same thing with the firearm by a felon conviction, same
7 time frame in 2009, he was still living with you, correct?

8 A I --

9 Q Which goes, basically, you know, from May until, from May
10 2009 to October 2010, roughly.

11 A Yeah, I think so.

12 Q He was living with you primarily, correct?

13 A I think so, yes.

14 Q And so when he was on probation for those offenses he was
15 living with you at that time, correct?

16 A For which offense?

17 Q Well, for the one in 2007 when he was 18. He got put on
18 probation.

19 A Yes.

20 Q He was living with you primarily --

21 A Yes.

22 Q -- then, correct?

23 And then when he got -- he was on, put on post-release
24 supervision in 2012.

25 So he went to prison in about 2010, got out in 2012. When

1 he got out, did he move in with you then?

2 A Yes.

3 Q Okay. And so he was on post-release supervision, you know.

4 When he got out of prison he was living with you, correct?

5 A Yes.

6 Q And, ma'am, what, if anything, did the defendant tell you
7 about this charge, though, the gun charge in December 2013?

8 A Nothing, really, that he just got pulled in a traffic stop.

9 Q And he was living with you in December of 2013 as well?

10 A No.

11 Q He wasn't? He'd already moved out?

12 A Uh-huh (indicating an affirmative response).

13 Q What about October of 2013? Do you know if he was living
14 with you then?

15 A No. I think he was with his daughter's mother then.

16 Q Okay.

17 MR. RENFER: May I have a moment, Your Honor?

18 THE COURT: You may.

19 (Pause)

20 MR. RENFER: Those are all the questions I have, Your
21 Honor.

22 THE COURT: Thank you, sir.

23 Ms. Dominguez?

24 MS. DOMINGUEZ: Thank you, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. DOMINGUEZ:

2 Q The prosecutor asked you about a larceny after a breaking
3 and entering from when your son was 18 years old. He also
4 asked you about an assault with a deadly weapon from when he
5 was 21 years old?

6 A Uh-huh (indicating an affirmative response).

7 Q Asked you if he was living with you at that time, correct?

8 A (No audible response.)

9 Q None of those offenses took place at your home?

10 A No.

11 Q Now he also asked you questions about when your son has
12 previously been on probation, correct?

13 A (No audible response.)

14 Q In any of his previous probations, have you been tasked
15 with the responsibility to report his violations to the Court?

16 A Yes.

17 Q You have been under a court -- you've signed documents
18 saying that, "I am responsible" --

19 A Oh, no, no. No.

20 Q So this would be the first time --

21 A Yes.

22 Q -- that you would be accepting responsibility to, to report
23 violations?

24 A Right, yes.

25 Q You were not under that same obligation --

1 A No.

2 Q -- in the past?

3 A No.

4 MS. DOMINGUEZ: No further questions, Your Honor.

5 THE COURT: Thank you.

6 Any follow-up, Mr. Renfer?

7 MR. RENFER: No, Your Honor.

8 THE COURT: Very well.

9 Thank you, ma'am. You may step down.

10 THE WITNESS: You're welcome. Thank you.

11 THE COURT: Ms. Dominguez, ma'am, is that the evidence
12 for the defendant?

13 MS. DOMINGUEZ: That is, Your Honor.

14 THE COURT: I'll be happy to hear your argument at
15 this time.

16 MS. DOMINGUEZ: My argument?

17 THE COURT: Yes, ma'am.

18 MS. DOMINGUEZ: Yes, Your Honor.

19 We believe that there are conditions that this Court
20 could set that would reasonably assure the safety of the
21 community, safety of anyone and the community, and his
22 appearance.

23 With respect to appearance, he has had violations of
24 probation in the past, but with his mother ensuring that he
25 will, that she will bring him to court. I'm unaware of any

1 violations that involve his failure to appear at this point.
2 I'm not, I'm unaware of that, but so -- well, the report does
3 say there are histories of failure to appear, failures to
4 appear. I just don't actually have, see them at this point.

5 But we believe that if he goes to his mother's home in
6 a very restricted setting, on an ankle bracelet, perhaps even
7 home incarceration, that there are conditions that could be set
8 that will ensure that he does appear as he's instructed to
9 appear for court. And, of course, she is a third-party
10 custodian and agrees that she will be part of that process.

11 With respect to his danger, I would note that he has
12 seemingly been out for the past year, year plus I suppose, and
13 I am not seeing that there have been violations in that time,
14 or criminal conduct other than this criminal conduct. And, of
15 course, he was cooperative in that interview that they say is
16 tape recorded. He -- there isn't any kind of evidence of these
17 firearms being used, even if you take the Government's evidence
18 on its face. He said that he had that firearm for protection.

19 Obviously, the Court is going to be concerned with
20 prior arrests and defense counsel's adequately aware of that,
21 but we would say that if you impose the most stringent
22 conditions, that there would be conditions that could be set.
23 The most stringent conditions of home incarceration would still
24 allow him to effectively be represented by counsel and consort
25 with his counsel and it would also be the most, least

1 restrictive way to handle this situation.

2 So we ask that you release him to the custody of his
3 mother and allow him to proceed with this criminal proceeding.

4 Thank you, Your Honor.

5 THE COURT: Thank you, ma'am.

6 Mr. Renfer, is the Government seeking detention on
7 both flight and danger grounds?

8 MR. RENFER: Yes, Your Honor.

9 THE COURT: And is the -- what is the basis for the
10 contention with respect to flight, his prior record on --

11 MR. RENFER: It --

12 THE COURT: -- post-conviction release?

13 MR. RENFER: That, as well as the numerous failures to
14 appear, which are on Page 5 of the Pretrial report. When it
15 lists under Other Arrests, that second full paragraph is a list
16 of offenses for which he failed to appear, Your Honor. And not
17 just one of them, the whole list is contained in that
18 paragraph, which, conservatively, are about 20 to 30 --

19 THE COURT: Uh-huh (indicating an affirmative
20 response).

21 MR. RENFER: -- offenses.

22 And, of course, he got a full hearing.

23 THE COURT: Okay. Very well, sir. Thank you.

24 MS. DOMINGUEZ: In response, Your Honor, I would just
25 note that, you know, I regret not seeing it that way before,

1 but I would note that all of those are of the traffic variety
2 offenses and none are more serious criminal proceedings.

3 THE COURT: Very well.

4 Folks, I have considered carefully the evidence and
5 argument that has been considered. Based on the record
6 developed before me, I believe the law requires me to allow the
7 Government's motion.

8 I do so finding that the Government has shown by clear
9 and convincing evidence that there's no condition or
10 combination of conditions that will reasonably assure the
11 safety of any other person and the community and that by a
12 preponderance of the evidence that it's shown that there's no
13 condition or combination of conditions that will reasonably
14 assure the appearance of the defendant, as required.

15 Mr. White, sir, my ruling does not affect the
16 presumption of innocence which you will continue to enjoy at
17 the trial in your case.

18 On a motion such as this, the Court is required to
19 consider certain specific factors. I have considered the
20 factors the law requires me to consider.

21 One is the weight of the evidence and I believe the
22 Government has shown that it has a strong case against you.
23 That would include the observations by the officers on the
24 scene, the recovery of the firearms, and then your statement at
25 least with respect to the Ruger pistol.

1 I'm required to consider the nature and circumstances
2 of the offense. This is a firearms-related offense and it
3 involves somebody who, according to the law, is not permitted
4 to have firearms.

5 So that represents a danger to the community. The
6 fact that there was ammunition in the car and that the gun was
7 being used for protection, so to speak, because you were
8 traveling through an area known for violence I think enhances,
9 is concerning for obvious reasons, that it indicates that there
10 was a real potential that the firearm would have been used. It
11 wasn't and I do take note of that and that is a mitigating
12 factor, obviously. But this is -- it contrasts with the
13 circumstance, say, where a gun is just sitting on a shelf and
14 never touched. This gun was, in that sense, being used.

15 I also noted that in your statement to the police you
16 indicated that you were an awareness that you were not
17 permitted to have a gun; hence, your storing it when you were
18 at your home in the woods.

19 So I do think that, while you're obligated,
20 nonetheless, I think your awareness of it and conscious
21 disregard of that requirement is something of an aggravating
22 factor.

23 I'm required to consider your history and
24 characteristics. And here, of course, your -- what strikes,
25 stands out is your criminal record, the four felony

1 convictions, three misdemeanor convictions, two, what I would
2 call, probation revocations. One might not have been purely
3 probation, but it was post-conviction release revocation and in
4 both instances for fairly extensive violations.

5 With respect to the probation after the, for the post-
6 release revocation after, I should say the post-conviction
7 release dealing with assault with a deadly weapon inflicting
8 serious injury, the violations there included possession of a
9 firearm, deadly weapon or explosive, new felony conduct, and
10 absconding. And those are all pretty serious matters,
11 obviously. And that was in 2009.

12 So it's not -- actually, the revocation was in 2012.
13 That's not terribly long ago. And then, of course, there was a
14 subsequent revocation as well, I believe.

15 I also take note of the fact that these -- actually,
16 there was a prior revocation, not a subsequent one.

17 I take note of the nature of these, that the felony
18 convictions, you know, I've mentioned assault with a deadly
19 weapon and then subsequent to that the felon in possession of a
20 firearm. And then here we are again on an issue of firearm
21 possession.

22 So that, that's troubling that notwithstanding service
23 of a term of imprisonment in connection with the felon in
24 possession of a firearm charge, that was not a deterrent to
25 that specific conduct. And you were released from that term of

1 imprisonment relatively recently, in 2012, and then the next
2 year the offense occurs again.

3 And that's, that's significant in the detention
4 context because, or the issue of detention because the greatest
5 sanction, really, for, in a detention context is to revoke the
6 release and return a defendant to jail pending trial. And if,
7 if a prison term of some months is not, did not deter you from
8 possessing a firearm, it, it undermines the Court's confidence
9 that the threat of being revoked at pre-trial release would,
10 would be effective in deterring you from that conduct.

11 I also make note of the considerable failures to
12 appear with respect to the issue of flight risk. I did take
13 note -- it's a point well taken -- that those were motor
14 vehicle, with respect to motor vehicle-related violations.
15 Nonetheless, a failure to appear is a failure to appear and I
16 think if one looks at that, combined with the general pattern
17 of disregard of the law, it undermines the Court's confidence
18 with respect to your appearing.

19 I'm required to consider the nature and seriousness of
20 the danger posed by your release. I think there's a clear
21 danger here of continued possession of firearms and the risk
22 associated with that.

23 The third-party custodial arrangement that is proposed
24 is not suitable for a number of reasons. One is your mother's
25 working, so you would be home alone for a considerable -- I say

1 "alone." She wouldn't be there. Your grandmother, I assume,
2 would be there, but from the evidence she's not in a position
3 to supervise you. She's not being proposed for that -- and so
4 you would be unsupervised on a regular basis during the week,
5 which is certainly not ideal and the proposed custodial home is
6 in the same community where this alleged conduct occurred. And
7 the fact is you've been at that same home and engaged in, in
8 other felonious conduct.

9 So whatever the dynamics of the household are, they've
10 not in the past been effective in deterring you from criminal
11 conduct. I don't -- I know that your mother hasn't been in a
12 formal role as a custodian, but that does tend to undermine the
13 Court's confidence that even placing in her role, given the
14 prior conduct that has come out of that household, that it
15 would be effective in deterring you from further criminal
16 conduct of this type.

17 Sir, those are the principal reasons for my decision.
18 I will be entering a written order in this matter.

19 Ms Dominguez, anything further on behalf of Mr. White
20 at this time?

21 MS. DOMINGUEZ: No, Your Honor.

22 THE COURT: Thank you.

23 Mr. Renfer, sir, anything further for the Government
24 at this time?

25 MR. RENFER: No, Your Honor.

1 THE COURT: Very well.

I remand the defendant to the custody of the United States Marshal.

4 (Proceedings included at 10:59 a.m.)

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9 I, court approved transcriber, certify that the
10 foregoing is a correct transcript from the official electronic
11 sound recording of the proceedings in the above-entitled
12 matter.

13 /s/ Janice Russell

May 8, 2015

14 | Janice Russell, Transcriber

Date

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